

To Interested Parties:

AB 1777 Workshops

We invite you to participate in workshops that we have scheduled to receive public comment on a draft rule to establish a statewide methodology governing the interchangeable use of emission reduction credits (see Attachment 1). The rule is required by AB 1777 (see Attachment 2). The workshops, both of which will cover the same topic, will be held at:

Workshop Date, Time, and Place

Thursday, September 19, 1996
1:00 p.m. to 4 p.m.
California Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

Friday, September 20, 1996
1:00 p.m. to 4 p.m.
California Air Resources Board
Annex 4 Auditorium
9530 Telstar Avenue
El Monte, California

Background

In March and June, ARB staff held workshops to receive comments from the public on the elements that a statewide emission credit trading rule (state trading rule) should address. There was general agreement that the state trading rule should identify basic, minimum requirements that would apply when districts develop rules authorizing interchangeable emission credit trading. Workshop participants also commented that a state trading rule should provide for banking of credits and certainty in the value of the credits over time.

Summary of Proposed Rule

The proposed rule would apply to districts that choose to develop an interchangeable credit trading program. The proposed regulation would ensure that interchangeable credits represent actual and enforceable emission reductions that are surplus to emission reductions included in district air quality plans.

The proposed rule does not revise, but builds on and expands, the existing emission reduction credit banking requirements of the New Source Review program. For example, the proposed rule would require a district to certify all emission credits and register the credits in a bank prior to use.

The proposed rule would give the districts the option of maintaining a separate pool of emission credits for New Source Review purposes. However, if a district elects to make all emission reduction credits interchangeable, it would have to ensure that all such credits comply with the provisions of the state trading rule.

Districts with market-based incentive programs, such as the South Coast District's Regional Clean Air Incentives Market, would need to demonstrate continued compliance with applicable statutory requirements if such programs are expanded to accommodate the trading of interchangeable credits.

Districts with existing interchangeable credit trading programs would have up to one year from the effective date of the state trading rule to make their programs comply with the state rule.

A district's interchangeable emission credit trading program must include specific quantification methods for calculating those emission reductions that qualify for credits. Necessary elements for a calculation methodology are specified in the proposed rule.

The proposed rule would not allow credits to be used to meet State requirements for Best Available Control Technology and federal requirements related to New Source Performance Standards, Best Available Control Technology, Lowest Achievable Emission Rate, or local, state, federal air toxics requirements.

Interchangeable credits would be generated in yearly increments; credits could not be used until the credit generation period is completed. For example, credits that are generated in the year 1997 would be available for use once the district certifies the completion of the credit generating activity that occurred in 1997. The district would also be required to specify an expiration date for each credit based on the remaining useful life of the source whose emissions have been voluntarily reduced. Once a credit is generated and certified, it would retain its full value and could be used at any future time prior to the expiration date of the credit, provided its use is consistent with progress, attainment, and maintenance provisions of district air quality plans.

Districts would submit to the ARB a triennial progress assessment report, which evaluates the air quality impacts of its credit trading program.

Comment Deadline and Future Actions

We encourage all interested parties to present comments on the proposed rule at the workshops. If you cannot participate or wish to supply additional information, we

will accept written comments on the draft proposal until September 27, 1996. Oral and written comments received will be evaluated and ARB staff will propose a final draft rule. The Air Resources Board is tentatively scheduled to consider adoption of a proposed rule on December 12, 1996.

If you have any questions or comments regarding this subject, please contact Ms. Lucille van Ommering, Staff Air Pollution Specialist, Office of Air Quality and Transportation Planning, at (916) 323-0296.

Attachments

ATTACHMENT 1

Proposal for Workshop Discussion
Release Date: August 23, 1996

Workshop Dates:
September 19, 1996 (Sacramento)
September 20, 1996 (El Monte)

The proposed regulation would be incorporated as new section 91500 through 91505 of Subchapter 5.5, Chapter 1, Division 3, Title 17, California Code of Regulations, to read as follows:

Subchapter 5.5 INTERCHANGEABLE AIR POLLUTION EMISSION
REDUCTION CREDITS

Article 1. Scope and Policy; Definitions

91500. Purpose.

This regulation establishes a statewide methodology for use by air pollution control and air quality management districts when calculating the value of emission reduction credits from stationary, mobile, or area sources when credits are used interchangeably. Its purpose is to facilitate the use of credits as a compliance alternative for meeting specified control requirements of air pollution control and air quality management districts. The methodology is intended to ensure that interchangeable credits represent verified emission reductions that are real, permanent, quantifiable, enforceable and surplus to those emission reductions which are needed to comply with existing requirements and consistent with district air quality plans.

91501. Definitions.

In complying with this regulation, districts shall apply definitions included in district rules adopted pursuant to section 40709 et seq. of the Health and Safety Code, except

as defined below.

(a) Air quality plan includes but is not limited to attainment, rate-of-progress, and maintenance plans adopted by districts to meet any state or federal requirement.

(b) Certified means an emission reduction credit has been evaluated by the air pollution control officer of the affected district pursuant to the requirements of this regulation and found to comply with all applicable district, state, and federal requirements prior to use of the credit.

(c) Credit generation period means the period of time, specified by year, in which emission reduction credits are generated.

(d) Emissions baseline means the lower of historic actual or allowable stationary or area source emissions, taking into account activity level and operating period, and calculated based on district protocols. Mobile source emission baselines shall be established consistent with district protocols and Air Resources Board emission factors where applicable. Baseline emissions shall be consistent with districts adopted air quality plans.

(e) Emissions achieved means the higher of actual emissions or the enforceable emissions limit during the credit generation period, taking into account activity level and operating period, and calculated on the basis of district protocols and Air Resources Board emission factors where applicable.

(f) Interchangeable credit means an emission reduction credit expressed in pounds of pollutant per year that can be used, traded, or banked as specified in this regulation and in accordance with state and federal law.

(g) Registered means the act of recording all certified emission reduction credit deposits, withdrawals, transfers and transactions.

Article 2. Criteria and Methodology for Generation and Use of Interchangeable Credits.

91502. Applicability.

(a) The provisions set forth in this subchapter shall apply to any district which adopts, implements, or amends a rule or regulation which provides for the generation and interchangeable use of emission reduction credits from stationary, mobile, or area sources.

(b) Districts with existing interchangeable credit rules and regulations shall make amendments as necessary to comply with this regulation within nine months of its effective date, unless the district can demonstrate to the

satisfaction of the Executive Officer that more time, not to exceed one year, is necessary.

(c) Districts with market incentive programs authorized by Health & Safety Code sections 39616 and 40440.1 that propose to expand such program to allow the use of interchangeable credits shall ensure compliance with criteria contained in section 39616(c), and this regulation.

(d) Districts may maintain a separate pool of credits for new source review offset purposes consistent with sections 40709 et seq. and 40918 through 40921 of the Health & Safety Code without complying with any additional or conflicting provisions of this regulation. If no separate pool of credits is maintained, credits generated pursuant to district adoption of an interchangeable credit program shall comply with this regulation.

91503. Generation and Use.

(a) Districts shall adopt rules, consistent with the provisions of this subchapter and with sections 40709-40714.5 of the Health & Safety Code, excluding section 40709.6, to govern the generation and use of interchangeable credits prior to implementing a program that allows the use of such credits to meet district requirements other than the offset provisions of their new source review programs.

(b) Interchangeable credits must be certified by the district in which the generation occurs and registered in that district's emission reduction credit bank prior to use.

(c) Districts, in consultation with the Air Resources Board, shall establish enforceable technical protocols that define how emission reductions will be calculated for purposes of certifying them as emission reduction credits.

(d) Districts shall ensure compliance with federal, state and district requirements governing credit generation and use through permit conditions or other enforceable instruments.

(e) Districts shall not allow use of emission reduction credits to comply with the best available control technology requirements of sections 40405 and 40918-40920.5 of the Health & Safety Code, and technology-based requirements of sections 111, 169, 171 and 173 of the federal Clean Air Act.

(f) Districts shall not allow the use of emission reduction credits to comply with any federal, state, or local requirements applicable to toxic air contaminants, including but not limited to requirements set forth in section 39665 et seq. of the Health & Safety Code and applicable regulations, and section 112 of the Federal Clean Air Act, except as specifically provided pursuant to such regulations.

(g) Emission reduction credits banked pursuant to Health & Safety Code section 40709 et seq., and accounted for in district air quality plans, may be converted to interchangeable credits consistent with this regulation, district rules, and district calculation protocols.

(h) Interchangeable credits may be used pursuant to Health & Safety Code section 40709.6 for new source review offset purposes only.

(i) Surplus emission reductions occurring prior to adoption of an interchangeable credit program shall not be used to create interchangeable credits unless the emissions are explicitly accounted for in the emission inventory of the district's adopted air quality plans.

(j) Emission reduction credits or market-based trading instruments generated under programs authorized by Health & Safety Code sections 39616 and 40440.1 may be converted to interchangeable credits only upon a determination by the district, based upon a study conducted by the district, with the concurrence of the ARB, that the interchangeable use of such credits complies with all applicable requirements, including criteria in Health & Safety Code section 39616(c).

(k) Once certified, credits generated by an individual emission source over several years may be aggregated for use in any single year prior to the expiration date of the credits.

91504. Calculation Methodology.

(a) Interchangeable credits shall be calculated based on a district's adopted calculation protocol, consistent with criteria specified in subparagraph (b), using the following general methodology,

Interchangeable Credit = Emissions/Baseline - Emissions/Achieved

(b) Methodologies used to quantify the value of credits must, at a minimum, include the following elements:

(1) Description of and/or formula for the calculation methods to be used to determine the amount of reductions being generated as credits.

(2) Description of how emission reductions will be evaluated to determine that they are surplus and available for use as interchangeable credits.

(3) Description of how emission inventory updates and changes in source category baselines, air quality plans, and regulatory requirements will be taken into account when calculating the value of each credit.

(4) Description of how to determine the remaining useful

life of the emissions source whose emissions are being voluntarily reduced.

(5) Provisions for the use of ARB emission factors, certification standards, and emission baseline data for motor vehicles and products under ARB regulatory authority.

(6) Description of how activity levels and operating periods will be accounted for in the calculation procedures.

(7) Description of the recordkeeping program that will be used to verify and enforce credit generation at the specified value over the full generation period.

Article 3. Criteria for Banking Interchangeable Credits.

91505. Banking

(a) Interchangeable emission reduction credits which are banked shall comply with requirements set forth in Health & Safety Code sections 40709 through 40714.5, excluding 40709.6.

(b) The district shall specify the earliest year in which an interchangeable credit can be used. A credit cannot be used prior to its certification and registration.

(c) Districts shall identify an expiration date for each credit which corresponds to the remaining useful life of the source whose emissions have been voluntarily reduced.

(d) Credits deposited in a district's bank shall retain their full value and can be used at any time in the future prior to their expiration date provided such use is consistent with the provisions of the district's air quality plan.

(e) Districts which adopt interchangeable credit programs shall prepare and submit to the Air Resources Board a report which evaluates the air quality impacts of its interchangeable emission reduction credit program, and includes, at a minimum, the data required by Health & Safety Code section 40709.5. The first report shall be submitted three years from the effective date of the adoption of the district's trading program, and included thereafter with the triennial progress assessment of the air quality plan.

ATTACHMENT 2

Assembly Bill No. 1777, Chapter 805 (Statutes of 1995)

SECTION 1. Section 39607.5 is added to the Health and Safety Code, to read:

39607.5. (a) The state board shall develop, and adopt in a public hearing, not later than June 30, 1997, a methodology for use by districts to calculate the value of credits

issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

(b) In developing the methodology, the state board shall do all of the following:

(1) Ensure that the methodology results in the maintenance and improvement of air quality consistent with this division.

(2) Allow those credits to be used in a market-based incentive program adopted pursuant to Section 39616 that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

(3) Ensure that the methodology does not do any of the following:

(A) Result in the crediting of air emissions which already have been identified as emission reductions necessary to achieve state and federal ambient air quality standards.

(B) Provide for an additional discount of credits solely as a result of emission reduction credits trading if a district already has discounted the credit as part of its process of identifying and granting those credits to sources.

(C) Otherwise provide for double-counting emission reductions.

(4) Consult with, and consider the suggestions of, the public and all interested parties, including, but not limited to, the California Air Pollution Control Officers Association and all affected regulated entities.

(5) Ensure that any credits, whether they are derived from stationary, mobile, indirect, or areawide sources, shall be permanent, enforceable, quantifiable, and surplus.

(6) Ensure that any credits derived from a market-based incentive program adopted pursuant to Section 39616 are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with paragraph (2).

(7) Consider all of the following factors:

(A) How long credits should be valid.

(B) Whether, and which, banking opportunities may exist for credits.

(C) How to provide flexibility to sources seeking to use credits so that they remain interchangeable and negotiable until used.

(D) How to ensure a viable trading process for sources wishing to trade credits consistent with this section.

(E) How to ensure that, if credits may be used within and between adjacent districts or air basins where sources are in proximity to one another, the use occurs while maintaining and improving air quality in both districts or air basins.

(c) If necessary, the state board shall periodically update the methodology as it applies to future transactions.

NOTE: AB 1777 also added Section 39617 to the Health and Safety Code which relates to the early retirement of high emitting vehicles. These requirements are being addressed in conjunction with the implementation of SB 501 (Statutes of 1995).